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DEPARTMENT OF COMMERCE

International Trade Administration

[C-834-808]

Silicon Metal from the Republic of Kazakhstan: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of silicon metal from the Republic of Kazakhstan (Kazakhstan) during the period of investigation (POI) January 1, 2016, through December 31, 2016.

DATES: APPLICABLE [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Rebecca M. Janz or Maria Tatarska, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2972 or (202) 482-1562, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is Globe Specialty Metals, Inc. In addition to the Government of Kazakhstan, the mandatory respondent in this investigation is Tau-Ken Temir LLP (Tau-Ken Temir).

A summary of the events that occurred since Commerce published the *Preliminary Determination*¹ on August 14, 2017, as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.² The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 27, 2018.³

¹ See *Silicon Metal from the Republic of Kazakhstan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 37847 (August 14, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Silicon Metal from Kazakhstan," dated concurrently with this notice (Issues and Decision Memorandum).

³ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

Scope of the Investigation

The product covered by this investigation is silicon metal from Kazakhstan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, Commerce received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, Commerce issued a Preliminary Scope Decision Memorandum⁴ to address these comments. Since the *Preliminary Determination*, Globe Specialty Metals, Inc., (the petitioner) submitted a case brief and interested parties submitted rebuttal briefs concerning the limits to silicon content as specified in the scope.

Commerce reviewed these briefs, considered the arguments therein, and is not making any additional changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.⁵ The scope in Appendix I reflects the final scope language.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

⁴ *See* Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Scope Comments Decision Memorandum for the Preliminary Determinations," dated June 29, 2017 (Preliminary Scope Decision Memorandum).

⁵ *See* Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Final Scope Comments Decision Memorandum," dated February 27, 2018 (Final Scope Decision Memorandum).

Based on our review and analysis of the comments received from parties, we made certain changes to the subsidy rate calculated for Tau-Ken Temir since the *Preliminary Determination*. As a result of these changes, Commerce has also revised the “all-others rate.” For a discussion of these changes, *see* the Issues and Decision Memorandum.

Use of Facts Otherwise Available Including Adverse Inferences

For purposes of this final determination, we have continued to determine that the Government of Kazakhstan and Tau-Ken Temir failed to act to the best of their abilities in responding to Commerce’s requests for information. Accordingly, we continue to rely on facts available with adverse inferences, in accordance with sections 776(a)-(d) of the Tariff Act of 1930, as amended (the Act), to calculate the subsidy rate for the mandatory respondent. A full discussion of our decision to rely on adverse facts available is presented in the “Use of Facts Otherwise Available and Adverse Inferences” section of the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we determined a rate for Tau-Ken Temir (the only individually investigated exporter/producer of subject merchandise). Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an “all others” rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis*, or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs Commerce to establish an “all others” rate using “any reasonable method.”

In this investigation, Commerce assigned a rate based entirely on facts available to Tau-Ken Temir. Accordingly, we are using “any reasonable method” to establish the all-others rate. We find that it is reasonable to rely on the rate established for Tau-Ken Temir as the all-others rate, particularly because there is no other information on the record that can be used to determine an all-others rate. We determine the total estimated net countervailable subsidy rates to be:

Company	Subsidy Rate
Tau-Ken Temir LLP ⁶	100 percent
All Others	100 percent

Suspension of Liquidation

As a result of our affirmative *Preliminary Determination*, pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from Kazakhstan which were entered or withdrawn from warehouse, for consumption on or after August 14, 2017, the date of the publication of the *Preliminary Determination* in the *Federal Register*.⁷

In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after December 12, 2017, but to continue the suspension of liquidation of all entries from August 14, 2017, through December 11, 2017, as appropriate.

We will issue a countervailing duty (CVD) order and reinstate the suspension of liquidation in accordance with our final determination and under section 706(a) of the Act if the

⁶ As discussed in the Issues and Decision Memorandum, Commerce continues to find that the following companies are cross-owned with TauKen Temir LLP: JSC NMC Tau-Ken Samruk and LLP Silicon Mining.

⁷ See *Preliminary Determination*, 82 FR at 37848.

United States International Trade Commission (ITC) issues a final affirmative injury determination, and we will instruct CBP to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: February 27, 2018.

Christian Marsh,
Deputy Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Analysis of Comments
 - Comment 1: Whether Commerce Should Apply Adverse Facts Available (AFA) to the Government of Kazakhstan (GOK)
 - Comment 2: Whether Tau-Ken Temir Is Cross-Owned with JSC NME Tau-Ken Samruk (Tau-Ken Samruk) and LLP Silicon Mining (Silicon Mining)
 - Comment 3: Whether Commerce Should Apply AFA to Tau-Ken Temir
 - Comment 4: Whether Commerce's Rejection of New Factual Information was Unlawful
 - Comment 5: Whether Commerce Selected an Appropriate AFA Rate
 - Comment 6: Whether the Sale of Assets to Tau-Ken Temir's Parent Company is a Countervailable Subsidy

VI. Recommendation

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